

² 5 U.S.C. § 8101 *et seq.*

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 8, 2019 appellant, then a 28-year-old deportation officer, filed a traumatic injury claim (Form CA-1) alleging that she developed cysts on both wrists on July 5, 2019 during physical training while in the performance of duty.³ OWCP accepted the claim for bilateral carpal tunnel syndrome and left wrist ganglion and resulting surgery. It authorized wage-loss compensation on the supplemental rolls beginning on June 9, 2020. Appellant returned to full-time light-duty work on July 12, 2020 and full-duty work on September 13, 2020.

On November 25, 2019 appellant underwent electromyogram and nerve conduction velocity (EMG/NCV) studies of the upper extremities, which exhibited no electrodiagnostic evidence of neuropathy or radiculopathy.

On December 2, 2019 appellant underwent a magnetic resonance imaging (MRI) scan of her left wrist, which demonstrated small synovial cyst and capsular defect of the radiocarpal articulation without vascular involvement, and a tiny partial tear or degeneration of the triangular fibrocartilage complex.

On June 9, 2020 appellant underwent OWCP-authorized bilateral carpal tunnel surgical releases and left snuffbox ganglion excision.

On July 29, 2020 appellant underwent an MRI scan of her right wrist due to a right wrist lump following her carpal tunnel release surgery. This scan demonstrated joint effusion.

In a report dated October 9, 2020, appellant's attending physician, Dr. Joseph L. Haber, a Board-certified hand and plastic surgeon, found that she had reached maximum medical improvement (MMI) with excellent sensation of the digits, a negative Tinel's sign over the median nerves, and intact sensation. He reported that appellant had zero percent disability.

On March 9, 2021 appellant filed a claim for (Form CA-7) for a schedule award. By letter dated March 15, 2021, she noted that she received a response to her Form CA-7, that she would need to be seen by a doctor for an impairment rating and requested approval to see a different doctor.

In a March 15, 2021 development letter, OWCP requested that appellant provide an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ It afforded her 30 days to submit additional medical evidence in support of her schedule award claim.

³ In her April 11, 2020 response to an OWCP development questionnaire, appellant clarified that her claim was for an occupational disease developing from June through July 2019.

⁴ A.M.A., *Guides* (6th ed., 2009).

In a March 22, 2021 report, Dr. Haber found that appellant had no permanent impairment. In a letter of even date, appellant requested an evaluation by another physician.

By decision dated April 20, 2021, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

On April 25, 2021 appellant requested reconsideration of the April 20, 2021 decision. She asserted that Dr. Haber failed to consider the fluid in her right wrist, her pain, and her inability to perform common tasks such as pushups as well as gripping and carrying heavy objects.

By decision dated May 7, 2021, OWCP denied appellant's request for reconsideration of the merits of appellant's claim.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA⁵ and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁷

Impairment due to carpal tunnel syndrome is evaluated under the scheme found in A.M.A., *Guides*, Table 15-23 (Entrapment/Compression Neuropathy Impairment) and accompanying relevant text.⁸ In Table 15-23, grade modifier levels (ranging from zero to four) are described for the categories of test findings, history, and physical findings. The grade modifier levels are averaged to arrive at the appropriate overall grade modifier level and to identify a default rating value. The default rating value may be modified up or down based on functional scale, an assessment of impact on daily living activities (*QuickDASH*).⁹

It is the claimant's burden of proof to establish permanent impairment of a scheduled member or function of the body as a result of an employment injury.¹⁰ OWCP's procedures provide that, to support a schedule award, the file must contain competent medical evidence, which shows that the impairment has reached a permanent and fixed state and indicates that the date on

⁵ 5 U.S.C. § 8107.

⁶ 20 C.F.R. § 10.404.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a. (March 2017); Chapter 3.700.2 and Exhibit 1 (January 2010).

⁸ A.M.A., *Guides* 449.

⁹ *Id.* at 448-49.

¹⁰ *J.P.*, Docket No. 21-0801 (issued December 22, 2021); *N.S.*, Docket No. 21-0508 (issued September 22, 2021); *Edward Spohr*, 54 ECAB 806, 810 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

which this occurred (date of MMI), describes the impairment in sufficient detail so that it can be visualized on review, and computes the percentage of impairment in accordance with the A.M.A., *Guides*.¹¹ Its procedures further provide that, if a claimant has not submitted a permanent impairment evaluation, it should request a detailed report that includes a discussion of how the impairment rating was calculated.¹² If the claimant does not provide an impairment evaluation and there is no indication of permanent impairment in the medical evidence of file, the claims examiner may proceed with a formal denial of the award.¹³

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

OWCP, on March 15, 2021, requested that appellant submit a permanent impairment evaluation from her physician addressing the extent of any employment-related permanent impairment using the A.M.A., *Guides*. Appellant did not, however, submit any medical evidence establishing permanent impairment.

In his October 9, 2020 report, Dr. Haber found that appellant had reached MMI with excellent sensation of the digits, a negative Tinel's sign over the median nerves, and intact sensation. He did not report any permanent impairment.

As noted above, appellant must submit an evaluation from a physician that includes a description of impairment in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.¹⁴ As she has not submitted any medical evidence supporting permanent impairment of a scheduled member or function of the body due to her accepted conditions, the Board finds that she has not met her burden of proof.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹¹ *Supra* note 7 at Chapter 2.808.5 (March 2017).

¹² *Id.* at Chapter 2.808.6a. (March 2017).

¹³ *Id.* at Chapter 2.808.6c. (March 2017).

¹⁴ *See D.J.*, Docket No. 20-0017 (issued August 31, 2021); *B.V.*, Docket No. 17-0656 (issued March 13, 2018); *C.B.*, Docket No. 16-0060 (issued February 2, 2016); *P.L.*, Docket No. 13-1592 (issued January 7, 2014).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.¹⁵

To require OWCP to reopen a case for merit review, pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.¹⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.¹⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.¹⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

OWCP previously denied her claim because the medical evidence of record was insufficient to establish permanent impairment of scheduled member or function of the body, warranting a schedule award. Thus, the Board must determine if appellant presented sufficient evidence or argument regarding her schedule award claim to warrant a merit review pursuant to 5 U.S.C. § 8128(a).²⁰

In her April 25, 2021 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law and did not advance a new and relevant

¹⁵ 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

¹⁶ 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). Chapter 2.1602.4b.

¹⁸ *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

¹⁹ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

²⁰ *See S.M.*, Docket No. 21-0392 (issued August 12, 2012); *H.T.*, Docket No. 20-1318 (issued April 27, 2021).

legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of the merits based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).²¹

The Board further finds that appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. With her reconsideration request, appellant submitted a statement noting her disagreement with Dr. Haber's October 9, 2020 report finding no evidence of permanent impairment. The underlying issue of the present case is whether appellant has submitted sufficient medical evidence to establish impairment of scheduled member or function of the body. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²² Thus, she is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).²³

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.²⁴

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

²¹ *Supra* note 15.

²² *A.M.*, Docket No. 20-1417 (issued July 30, 2021); *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

²³ *Supra* note 15; *see T.H.*, Docket No. 18-1809 (issued May 23, 2019); *Johnny L. Wilson*, Docket No. 98-2536 (issued February 13, 2001).

²⁴ *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

ORDER

IT IS HEREBY ORDERED THAT the April 20 and May 7, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 28, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board